

CHAPTER 3
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 9/21/88, see Blind, Division for the[423] Ch 3]

111—3.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the commission are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

111—3.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action as provided in Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the administrative bulletin of the subject matter and indicating where, when and how persons may comment.

111—3.3(17A) Public rule-making docket.

3.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

3.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the agency or from the time of announcement at a meeting of the commission. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

3.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory flexibility analysis, an economic impact statement, or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal note has been issued, and where any such written request, analysis, statement or note may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

111—3.4(17A) Notice of proposed rule making.

3.4(1) Contents. At least 35 days before the adoption of a rule, the agency shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when and how persons may present their views on the proposed rule; and
- e. Where, when and how persons may demand an oral proceeding on the proposed rule, if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

To facilitate transcription into the alternative media of braille, cassette tape or large-type format, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

3.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to incorporation by reference of other materials in an adopted rule that are contained in subrule 3.12(2).

3.4(3) Notices mailed. Persons desiring to receive mailed copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail a copy of that notice to subscribers who have filed such a written request with the agency for mailed Notices of Intended Action. The written request shall be accompanied by payment of a subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

3.4(4) Provision in alternative media. Mailed copies of Notices of Intended Action shall be provided in standard print format, unless an individual shall request provision of the Notices in the alternative medium of braille, cassette tape or large-type format. Notices in the alternative media shall be provided in a timely manner.

111—3.5(17A) Public participation.

3.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Administrative Rules Coordinator, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309 or the person designated in the Notice of Intended Action.

3.5(2) Oral proceedings. The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. The request must also contain the following information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The agency may waive technical compliance with these procedures.

3.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or subrule 3.6(6).

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. The notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The director, the agency administrative rules coordinator or a division administrator of the agency, as designated by the director, shall preside at the oral proceeding on the proposed rule. If the director does not preside, the presiding officer shall prepare a memorandum for consideration by the director summarizing the contents of the presentations made at the oral proceeding unless the director determines that a memorandum is unnecessary because the director will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

- (1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

3.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

111—3.6(17A) Regulatory flexibility analysis.

3.6(1) Definition of small business. For purpose of this rule, “small business” shall have the same definition as in Iowa Code section 17A.31.

3.6(2) Notice in Iowa Administrative Bulletin. If the agency proposes a rule which may have an impact on small business, the Notice of Intended Action published in the Iowa Administrative Bulletin, according to the requirements of Iowa Code section 17A.4(1)“a,” shall expressly recite this possibility and describe the procedure to be followed for making a timely request of the agency for the issuance of a regulatory flexibility analysis.

3.6(3) Mailing list. Small businesses or organizations of small businesses may be registered on the agency’s small business impact list by making a written application to the agency administrative rules coordinator. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency will periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization of small businesses wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

3.6(4) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business, adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

3.6(5) *Requests for analysis.* A request for a regulatory flexibility analysis that is calculated to reduce the impact of a rule on small business may be made within 20 days after the publication of the Notice of Intended Action. A request is made when mailed or delivered to the agency and must be in writing and must identify the proposed rule for which the analysis is requested by ARC number and by Iowa Administrative Bulletin citation, if known. The request must also indicate whether the analysis is desired for the entire rule or only for specified portions of the rule. Such a request may be accompanied by a brief or other information relevant to the contents of the requested regulatory flexibility analysis. The agency shall issue a regulatory flexibility analysis that conforms to the requirements of Iowa Code section 17A.3(4) after a proper request from:

- a. The governor;
- b. The administrative rules review committee;
- c. A political subdivision of the state;
- d. Twenty-five or more persons who sign the request, provided that each represents a different small business;
- e. An organization of at least 25 small businesses that is registered on the agency's small business impact list. That organization shall list the name, address, and telephone number of not less than 25 small businesses it represents.

3.6(6) *Analysis: publication and comments.* When the agency is required to issue a regulatory flexibility analysis for a proposed rule, the agency shall cause to be published in the Iowa Administrative Bulletin a concise summary of the regulatory flexibility analysis at least 20 days prior to the adoption of the proposed rule. In the case of a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2), the agency shall cause the summary to be published within 90 days after publication of the adopted rule. The published summary shall state how interested persons may obtain a copy of the full text of the regulatory flexibility analysis for the cost of its reproduction. The published summary shall also establish a time and place for oral proceedings in which interested persons may make oral presentations on the analysis.

3.6(7) *Agency initiated analysis.* The agency may also prepare a regulatory flexibility analysis in advance of the publication of the Notice of Intended Action or at any other time. The agency may publish a summary of such an analysis with the Notice of Intended Action and provide the opportunity for oral presentation and submission of comments on the analysis simultaneously with those provided for in the Notice of Intended Action.

111—3.7(17A) Economic impact statement and fiscal note.

3.7(1) *Issuance of impact statement.* Upon written request of two or more members of the administrative rules review committee or the administrative rules coordinator, the agency shall issue a statement indicating its estimate of the economic impact of a proposed rule or a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2), or made effective in reliance upon Iowa Code section 17A.5(2) "b," on all persons affected by it and upon the agency itself, or a statement indicating that such an estimate cannot be formulated and reasons for this conclusion. The agency may also issue an economic impact statement for a proposed or adopted rule on its own motion.

3.7(2) *Impact statement contents.* When an economic impact statement is issued in response to a written request from two or more members of the administrative rules review committee or the administrative rules coordinator, the impact statement shall conform to all lawful and feasible requirements for that impact statement imposed by the requester. An economic impact statement may contain one or more of the following:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

- b. A description of the probable quantitative and qualitative impact of the proposed rule upon affected classes of persons;
- c. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- d. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;
- e. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- f. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- g. An indication of both the short-term and long-term consequences of the proposed rule;
- h. An indication of the precise methodology used to reach its estimates and the particular data, if any, used to formulate its estimates and their source; and
- i. Quantification of the data relied upon to formulate any estimate contained in that impact statement.

3.7(3) *Publication and notice of impact statement.* The economic impact statement or statement indicating the reasons why such an estimate is impossible shall be published in the Iowa Administrative Bulletin at least 15 days in advance of adoption of the rule, if it is requested for a proposed rule, or within 45 days of the time it is requested, if it is requested for a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)“b.”

3.7(4) *Fiscal note.* If a proposed rule is likely to necessitate additional expenditures by political subdivisions or agencies and entities that contract with a political subdivision to provide services which are beyond the expenditures explicitly provided by state law, a fiscal note estimating those costs shall be formulated by the agency. In addition to that estimate, the fiscal note shall indicate the precise methodology used to reach the estimate and data, if any, used to formulate the estimate and its source. The agency shall indicate in its Notice of Intended Action where and how persons may obtain copies of the fiscal note prepared for that proposed rule, which shall, if feasible, be available by the date the Notice of Intended Action is published in the Iowa Administrative Bulletin. If the agency determines at the time it adopts a rule that the fiscal note issued in the proceeding upon which the rule is based contains errors, the agency shall, at the time, issue a corrected fiscal note.

111—3.8(17A) Time and manner of rule adoption.

3.8(1) *Time of adoption.* The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

3.8(2) *Consideration of public comment.* Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, any memorandum summarizing such oral submissions, and any regulatory flexibility analysis, economic impact statement, and fiscal note issued in that rule-making proceeding.

3.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

111—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

3.9(1) The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of the Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question.

3.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question, the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

3.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make the rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator and the administrative rules review committee within three days of its issuance.

3.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

111—3.10(17A) Exemptions from public rule-making procedures.

3.10(1) *Omission of notice and comment.* To the extent the commission, for good cause, finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

Rules which are mandated by federal law or regulation are exempted from the usual public notice and public participation requirements in any situation where the commission has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules.

Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the commission would have no option in the rule which was adopted.

3.10(3) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding is commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

111—3.11(17A) Concise statement of reasons.

3.11(1) *General.* When requested by a person, either prior to adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and must be delivered to the Administrative Rules Coordinator, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

3.11(2) *Contents.* The concise statement of reasons shall contain:

- a.* The reasons for adopting the rule;
- b.* An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c.* The principal reasons urged in the rule-making proceeding for and against the rule, and the reasons for overruling the arguments made against the rule.

3.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 45 days after receipt of the request. A copy of the concise statement of reasons shall be mailed to the requesting party within two working days of the date it is issued.

111—3.12(17A) Contents, style, and form of rule.

3.12(1) *Contents.* Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a.* The date the commission adopted the rule;
- b.* A statement of the purpose of the rule;
- c.* A reference to all rules repealed, amended, or suspended by the rule;
- d.* A reference to the specific statutory or other authority authorizing adoption of the rule;
- e.* Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and
- f.* The effective date of the rule.

3.12(2) *Incorporation by reference.* The agency may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the proposed or adopted rule would be unduly cumbersome, expensive or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency, organization, association or other persons originally issuing that matter make copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association or persons originally issuing the matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

3.12(3) *References to materials not published in full.* When the Code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive or otherwise inexpedient, the agency shall prepare and submit to the Code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of the full text at actual cost upon request.

At the request of the Code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive or otherwise inexpedient.

To facilitate transcription into the alternative media of braille, cassette tape or large-type format, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

3.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

111—3.13(17A) Agency rule-making record.

3.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

3.13(2) *Contents.* The agency rule-making record shall contain:

a. Reference to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Reference to any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the director or the commission in formulation, proposal or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based, or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by the presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory flexibility analysis, economic impact statement, or fiscal note prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for exceptions to, amendments of, or repeal or suspension of, the rule;

h. A copy of any objection to issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection; and

j. A copy of any executive order concerning the rule.

3.13(3) *Effect of record.* Except as otherwise required by provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on the rule.

3.13(4) *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

111—3.14(17A) *Filing of rules.* The agency shall file each rule adopted by the commission in the office of the administrative rules coordinator. The filing must be executed as soon after adoption as is practicable. At the time of filing, each rule must have attached to it any fiscal note and any concise statement of reasons that were issued with respect to that rule. If a fiscal note or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

111—3.15(17A) *Effectiveness of rules prior to publication.*

3.15(1) *Grounds.* The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required findings and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.15(2) *Special notice.* When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of rules prior to their indexing and publication include, but are not limited to, any one or more of the following: radio, newspaper, television, signs, mail, telephone or personal notice.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

111—3.16(17A) General statements of policy.

3.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) “a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from, the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10) “f,” or otherwise authorized by law or to be kept confidential, the compilation must be made available for public inspection and copying.

3.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 3.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

111—3.17(17A) Review by agency of rules. At least every five years, the agency shall review all of its rules and decisions of particular applicability to determine whether any new rule should be proposed or any existing rule should be amended or repealed. In conducting that review, the agency shall prepare a written report summarizing its findings, its supporting reasons, and any proposed course of action. A copy of the agency’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

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